

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

KEVIN ERNST DUCLAIRON,

No. 3:12-cv-01753-HU

Plaintiff,

**FINDINGS AND
RECOMMENDATION**

v.

GABRIELLE FRANKLIN et al.,

Defendant.

HUBEL, Magistrate Judge:

Before the court is plaintiff Kevin Ernst Duclairon's ("Plaintiff") application (Docket No. 1) to proceed *in forma pauperis*. Plaintiff's request to proceed *in forma pauperis* is granted solely for the purpose of this Findings and Recommendation. For the reasons stated herein, Plaintiff's complaint should be dismissed.

Analysis

Plaintiff brought this civil rights action against Gabrielle Franklin, Guy Franklin, John MacArthur, Melinda MacArthur, and "the gay community/ Klan community." (Compl. at 2.) On the second page of his complaint, Plaintiff refers to Gabrielle Franklin and

1 Melinda MacArthur as "voice[s] in my head." (*Id.*) Plaintiff
2 attempts to invoke federal question jurisdiction by claiming
3 "Franklin [and] MacArthur" violated his constitutional rights by
4 using the "gay Klan community" to force him to "live . . . the life
5 of a homosexual, and raped fornicator with HIV." (*Id.* at 3.)
6 Apparently, Plaintiff has "already lost this case in Seattle and
7 twice in Portland seeking a stalking order [and] restraining
8 order." (Mot. Appointment Counsel at 1.) The court could not find
9 any previously filed federal cases by Plaintiff in the District of
10 Oregon or the Western District of Washington on the Federal
11 Judicial Public Access to Court Electronic Records ("PACER")
12 Service. However, a search of the Washington state court database
13 reveals at least two cases from King County Superior Court where
14 Plaintiff unsuccessfully petitioned the court for an order to
15 protect him from harassment and had his case dismissed.

16 It is well settled that district courts must dismiss an *in*
17 *forma pauperis* action if it (1) is frivolous or malicious; (2)
18 fails to state a claim on which relief may be granted; or (3) seeks
19 monetary relief against a defendant is immune from such relief. 28
20 U.S.C. § 1915(e)(2)(B); see also *Lopez v. Smith*, 203 F.3d 1122,
21 1129 (9th Cir. 2000) (concluding that § 1915(e)(2)(B) applies to
22 non-prisoners). In *Denton v. Hernandez*, 504 U.S. 25, 112 S. Ct.
23 727 (1992), the Supreme Court explained that "a finding of factual
24 frivolousness is appropriate when the facts alleged rise to the
25 level of the irrational or the wholly incredible whether or not
26 there are judicially noticeable facts available to contradict
27 them." *Id.* at 33. Put another way, a case may be dismissed as
28

1 factually frivolous when the facts alleged are "clearly baseless."
2 *Id.* at 32.

3 Plaintiff's allegations, on their face, are irrational to say
4 the least. For example, under his first claim for relief,
5 Plaintiff alleges that he is being "terroriz[ed] . . . mentally by
6 voice" and raped nightly in his sleep. (Compl. at 3.) Plaintiff
7 also claims that the "gay and Klan community" have been watching
8 him, and that Gabrielle and Guy Franklin "demand[ed] slavery,
9 submission, ma[de] death threats, [and] demand[ed] [Plaintiff's]
10 return to Haiti." (*Id.*) In support of his second claim for
11 relief, Plaintiff alleged that a "representative from the gay
12 community [is being used] to drive [him] out of every American
13 establishment." (*Id.* at 5.) Plaintiff then suggests he has been
14 injected with sedatives and that "mind conversations [are] leading
15 [him] to homosexuality by hits, force destroying [his] property,
16 death threats, being jumped by Mexicans in Seattle because [he]
17 refused to submit." (*Id.*) Under his third claim for relief,
18 Plaintiff alleges that John MacArthur and Gabrielle Franklin want
19 to make Plaintiff their slave and keep him "under white supremacy
20 and homosexual to never marry or have a family or church ministry
21 of [his] own." (*Id.*) In terms of relief, Plaintiff requests,
22 among other things, that "MacArthur/ Franklin & gays" replace
23 several vehicles they destroyed.

24 In short, the court has determined that the facts alleged in
25 Plaintiffs complaint "rise to the level of irrational or the wholly
26 incredible." *Denton*, 504 U.S. at 33. Plaintiff's complaint should
27 therefore be dismissed.

28 ///

1 **Conclusion**

2 For the reasons set forth above, Plaintiff's complaint is
3 frivolous and should be dismissed. See 28 U.S.C. §
4 1915(e)(2)(B)(i). Because it is apparent from the face of the
5 complaint that the deficiencies cannot be cured by amendment,
6 dismissal of the complaint should be with prejudice. *Karim-Panahi*
7 *v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988);
8 *Noll v. Carlson*, 809 F.2d 1446, 1447 (9th Cir. 1987). In addition,
9 the court should certify that any appeal from the dismissal of this
10 proceeding would not be taken in good faith. See 28 U.S.C. §
11 1915(a)(3).

12 **Scheduling Order**

13 The Findings and Recommendation will be referred to a district
14 judge. Objections, if any, are due **February 13, 2013**. The
15 Findings and Recommendation will go under advisement on **February**
16 **13, 2013**.

17 Dated this _25th_ day of January, 2013.

18 s/ Dennis J. Hubel
19 DENNIS J. HUBEL
20 United States Magistrate Judge
21
22
23
24
25
26
27
28